O|C.T.C.O|51

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**File No.** 32|51

Legal Dept.

G **BRANCH**

**Subject:—**

Opinions on the
Cotton Textiles (Control)
Order, 1948

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# C O N T E N T S.

**Legal Department File No. O. C.T.C.O. /51**

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Legal Department.

It seems from the Provincial Textile Controller's office note at page 35 that as per the Provincial Textile Controller's freezing order-No. 122/BY dated 14th October 1950 M/s. Deongarshi Gangji declared 32 bales of yarn as lying with them on account of M/s. Hassanand Thakordas and M/s. Hassanand Thakordas declared the bales as lying with M/s. Deongarshi Gangjee under process for dyeing. Their contention is that the bales were sold on 30th August 1950 and were lying with the Bombay Dyeing and Manufacturing Co. Ltd. for being dyed and were delivered to Hassanand on 31st October 1950 and price was paid by Hassanand on 1st November 1950. The Bombay Dyeing and Manufacturing Co. has stated in their letter to the Provincial Textile Controller dated 6th January 1951 that the bales were sent to them for the purpose of processing and were subsequently delivered by M/s. Deongarsee to M/s. Hassanand on 31st December 1950. Section 20 of the Sale of Goods Act, 1930 provides that where there is an unconditional contract for the sale of specific goods in a deliverable state the property in the goods passes to the buyer when the contract is made and it is immaterial whether the time of payment of price or the time of delivery of the goods or both is postponed. In this case it is not clear whether the goods were in a deliverable state or not on 30th August 1950 on which they are alleged to be sold. If the contract was of sale of unprocessed yarn and if the goods were processed at the instance of Hassanand, the property in the goods can be said to have passed to Hassanand on 30th August 1950 and then the Provincial Textile Controller's freezing order dated 14th October 1950 would apply to the goods in his hands and would lie forzen and he could be asked to sell the goods to Government by making an order on the lines of draft II provided in this office U.R. to P.T.C.

No. 259 dated 28th July 1950.

But if the sale was of processed goods by Shri Doongarsee and the goods were with the processor on behalf of him, then the goods could not be said to be in a deliverable state on 30th August 1950 and therefore the property in the goods would not pass to Hassanand. The Provincial Textile Controller's freezing order dated 14th October 1950 would therefore apply to the said goods in the hands of Doongarsee and the subsequent delivery and acceptance of price is in contravention of the Provincial Textile Controller's freezing order. In that case M/s Doongarsee has committed a breach of the said order. However, the goods are with Hassanand now and if the contract was for processed goods, Government can take over goods from Hassa and only after issuing orders I and II as provided in the abovesaid U.R. from this office to Provincial Textile Controller.

Id./.....

Additional Secretary to Government.

U.R. to P.T.C., No. C-129, dated the 4th April 1951.

SMR 26-7-56
4 Copies.

Legal Department.

The question for R.L.A. s consideration is whether the Special Retail Distributor can be prosecuted on the following charges:-

(1) For breach of condition No. 6 of the Special Retail Distributor license in that he did not account for the muddamal cloth returned to him by the Court, in the Stock and Sale Register as required by the District Magistrate.

(2) Under clause 25(2)read with clause 29(2) of the Cotton Textiles(Control)Order, 1948 for disposing of the said muddamal cloth which had become time-barred without getting the same re-stamped.

As regards the first charge, the stock of muddamal cloth of about 2000 yards was returned by the Court to the accused on 24th March 1949 and 26th March 1949. As he did not account for the same in the Stock and Sale Registers, as required under the District Magistrate's direction he has committed breach of the condition No. 6 of the Special Retail Distributor licenee and can be held liable under clause 5 of the Bombay Cotton Cloth Dealers Licensing Order, 1949.

Regarding the second charge, the cloth in question bearing the tex-marks of 1945, 1946 and 1947 had become time-barred on 24th/26th March 1949 when it was returned to the accused and its purchase, sale and possession after these dates by the dealer without getting it re-stamped under clause 26 of the Order was illegal under clause 25 of the Order. The State Textile Controller has issued the Press-note, dated the 18th August 1950 allowing the Special Retail Distributor to dispose of within 30th September 1950 the time-barred stocks held by them on 1st December 1948 without getting such cloth T.C.B. stamped. Hence the concession granted by the Press note regarding the sale of time-barred cloth

extends to 30th September 1950. Thereafter the possession, sale and purchase of such cloth by a dealer otherwise than under the provisions of clause 26 of the Order is illegal under clause 25 of the Order.

It is not known how much of the cloth disposed of by the accused was sold after 30th September 1950 Hence it is not feasible to prosecute him for selling the stocks already disposed of. However, in respect of the stock of 400 yards found in possession of the accused, he can be held liable under clause 25(1)and (2)of the Order for being in possession of the cloth packed before 1st August 1948 and after the expiration of 12 months from the last day of the month marked thereon and under clause 29(2)of the Order read with the Textile Commissioner's Notification No. 80-Tex. 1/48(1), dated 29th November 1948 for not declaring these stocks.

Id./.....

Additional Secretary to Government.

U.R. to S.T.C.,No. G-365, dated the 20th August 1951.

SMR 26-7-56
4 Copies.

The question for R.L.A.'s consideration is whether the legal proceedings threatened by Shri Thakur, Advocate on behalf of M/s Kanayalal Chellaram, would be defensible, if instituted.

The Advocate has made two claims on behalf of his client. The first is regarding the refund of the re-stamping fees paid by his clients under protest and the second is regarding the payment of Rs. 5293/8/9 being the loss sustained by his clients on account of the State Textile Controller's taking over cloth from him at the rate of Ex-mill + 2% which cloth his clients purchased at Ex-mill + 5% from M/s. Baijnath Brijmohan.

Regarding the claim for refund of re-stamping fees it is clear that the processors, M/s. Manohar Textile Mills had stamped false price marks, and could have been held liable under clause 23(1)(f) of the Cotton Textile (Control) Order, 1948. As the cloth was processed at the instance of M/s. Kanayalal, they could also have been held liable under the said clause as abettors, although they have tried to shift the liability on the processors in respect of false stamping. Apart from the question of criminal liability, the State Textile Controller had to undertake the restamping of the cloth by reason of the said false markings and incur expenses in that behalf. As the State Textile Controller has purchased the cloth from M/s. Kanayalal, the State Textile Controller is entitled to hold them responsible for the breach of warranty, viz., that the cloth should have been correctly price marked (vide section 13 of the Indian Sale of Goods Act) and recover by way of damages the expenses incurred by him in restamping the cloth (vide section 59 of the Indian Sale of Goods Act) and the fact that M/s, Kanayalal and the processors had offered to the State Textile Controller to carry out the restamping of correct prices at the latter's factory without charging therefor, would

not militate against the State Textile Controller's said right to damages. What should be the amount of damages is a question of fact depending upon the reasonable cost of re-stamping. The State Textile Controller has recovered the stamping fees at 6 ps. per yard. As the cloth in question originally bore the mark of the months of September and October 1950 and was processed and repacked in December 1950 and January 1951 and was frozen by the State Textile Controller on 27th November 1950 and directed to be sold on 24th March 1951, the restamping was necessitated not by reason of the cloth having become time-barred under clause 25(2)of the Cotton Textile(Control)Order, 1948. The restamping cannot, therefore, be said to have been done under Textile Controller's Notification No. 9(9)-Tex. I/49 (1), dated 30th April 1949 and the State Textile Controller cannot necessarily charge the fee of 5% of the ex-factory price or half anna per yard as prescribed under the said notification. The State Textile Controller can only recover the ordinary reasonable charges of restamping. Consequently, the party's claim for refund of the restamping fees paid by them under protest can be resisted by the State Textile Controller only to the extent of the ordinary reasonable charges of such re-stamping and no further.

The claim for damages and compensation for loss incurred can be successfully resisted in view of the recent judgments of the High Court in Baijnath Brijmohan's case and other similar cases.

Id./.....

Additional Secretary to Government.

U.R. to S.T.C., No. G-532, dated the 5th November 1951.

SMR 26-7-56
4 Copies.

From the facts it appears that the bale was in original mill packed condition when it was opened at the Government cloth shop, Dohad. The mill has contended that from the Panchkyas it would seem that the alleged shortage is not due to short packing but to pilferage in transit. The mill seems to have interpreted the statement at 'A' of Panchkyas at page 9 to mean that the sarees were pilfered in transit but this is not correct. The statement at 'A' means that the 4 sarees appeared to have been removed by pulling them from the bundle as is evident from the fact that the end of one of the remaining sarees is crumpled. The string of the bundle was also found to be cut.

As the bale was in mill packed condition this pilferage must have occured at the Mill at the time of packing the bale. However the Mill cannot be prosecuted for breach of clause 21(1)of the Cotton Textiles(Control)Order, 1948, as the sarees packed appear to be 296 x 5 = 1480 yards which is the permissible yardage under that clause. The only remedy is to file Civil Proceedings for recovery of the price of 4 sarees found short. The price of these 4 sarees is Rs. 26-5-0 only and the State Textile Controller may consider whether it would be worth while to file a suit for recovery of such a paltry amount.

Id./..... 13/12

Remembrancer of Legal Affairs,

U.R. to S.T.C., No. G-635, dated the 15th December 1961.

SMR 26-7-56
4 Copies.